

Amendment No. 1 to HB1285

Vaughan
Signature of Sponsor

AMEND Senate Bill No. 1577

House Bill No. 1285*

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 50-6-411, is amended by deleting the section and substituting:

(a)

(1) In order to carry out the purposes of this chapter, the administrator or the administrator's designee, upon receipt of sufficient information to give reasonable cause that an employer may be in violation of the insurance requirements of this chapter and upon the compliance specialist presenting appropriate credentials to the owner, operator, or agent in charge, is authorized:

(A) To inspect and investigate the places of employment and pertinent conditions; business records, including complete payroll and tax information; certificates of insurance; sign in and sign out sheets for jobsites; and vendor lists; and

(B) To question privately an employer, owner, operator, agent, worker, or employee.

(2) The administrator or the administrator's designee may request, and the general contractor shall provide, a list of amounts paid by the general contractor to subcontractors on the jobsite.

(b) The administrator or the administrator's designee shall designate representatives who may serve subpoenas and other process of the bureau issued under this chapter.

(c)

(1) For the purposes of workers' compensation insurance compliance investigations, the administrator or administrator's designee may issue and serve subpoenas:

(A) For the attendance of witnesses at administrative hearings;

and

(B) For the production of books, documents, or other tangible things that may be relevant, or reasonably calculated, to lead to the discovery of relevant information necessary to determine whether the employer is subject to this chapter held by the employer or third parties, including, but not limited to, general contractors, subcontractors, intermediate contractors, accountants and tax preparers, insurance agents and carriers, and banking institutions.

(2)

(A) Information requested in a subpoena under subdivision

(c)(1)(B) must be submitted to the bureau within twenty-one (21) calendar days of service of the subpoena.

(B) If an employer or entity wishes to dispute the subpoena, then the employer or entity shall submit that dispute with particularity, in writing, to the administrator or the administrator's designee within ten (10) calendar days of service of the subpoena.

(C) Failure to timely comply with the subpoena issued and served under subdivision (c)(1)(B) may result in an assessment by the bureau of civil penalties against the employer and third-party holder of information relevant to the bureau's investigation. The penalties, if assessed by the bureau, may be in an amount not less than fifty dollars (\$50.00) per day

per subpoena until the requested information is provided, or five thousand dollars (\$5,000) per subpoena, whichever is less.

(3)

(A) In addition to civil penalties, if a person refuses to obey a subpoena to appear for an administrative hearing or to produce evidence requested by the administrator or the administrator's designee, then the administrator or the administrator's designee may seek an order requiring compliance with the subpoena in the chancery court where the person named in the subpoena resides. The chancery court may find a person who refuses to obey an order requiring compliance with a subpoena in contempt.

(B) In addition to civil penalties, the person who refuses to comply with a subpoena under this section shall pay costs, including reasonable attorneys' fees, court costs, and court reporter attendance and transcription costs, incurred by the administrator or the administrator's designee in obtaining an order to enforce the subpoena.

(4) An employer or entity who is aggrieved pursuant to this section may appeal under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) Penalties assessed pursuant to this section must be deposited in the employee misclassification education and enforcement fund established by § 50-6-913 to be administered by the administrator.

SECTION 2. Tennessee Code Annotated, Section 50-6-412, is amended by deleting the section and substituting:

(a) An employer fails to secure workers' compensation if, at any time, an employer:

(1) Who is required by this chapter to secure or maintain insurance, fails to secure or maintain the payment of workers' compensation insurance coverage; or

(2) Misclassifies employees to avoid proper classification for premium calculations by:

(A) Concealing information pertinent to the computation and application of an experience rating modification factor; or

(B) Materially understating or concealing the amount of payroll, the number of employees, or the employees' duties.

(b)

(1) The bureau shall assess against an employer who has failed to comply with subdivision (a)(1) or (a)(2) a penalty equal to one and one-half (1 1/2) times the accurate average yearly workers' compensation premium, or, if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars (\$1,000) or one and one-half (1 1/2) times the accurate average yearly workers' compensation premium when applying appropriate assigned risk rates to the employer's payroll, minus the premium dollars paid, if any, during a period of violation.

(2) If the employer fails to secure the payment of workers' compensation insurance coverage as ordered by the administrator or the administrator's designee within the required time as set forth by the decision, then the bureau shall assess a second penalty, immediately due and payable, equal to the greater of one thousand dollars (\$1,000) or an amount equal to the accurate average yearly workers' compensation premium. The bureau shall hold the second penalty in abeyance if coverage is timely obtained pursuant to the order.

(3) If the administrator or the administrator's designee determines the period of noncompliance is less than twelve (12) consecutive months, then the

administrator or the administrator's designee shall prorate any assessed monetary penalty; however, the monetary penalty shall not be less than an amount equal to one (1) month's premium or, in the case of construction services providers, not less than one thousand dollars (\$1,000).

(c)

(1) If the bureau's investigation of an employer reasonably indicates that the employer is subject to this chapter and has failed to comply with the insurance requirements of this chapter, then the bureau shall so notify the employer by certified letter advising the employer of monetary penalties that may be assessed.

(2) The employer shall provide to the bureau, within ten (10) calendar days of the receipt of the certified letter:

(A) Proof that the employer had secured the payment of workers' compensation insurance at all required times; or

(B) Proof that the employer has not engaged in misclassification of its employees.

(3) If the bureau determines that sufficient proof is not provided, then the administrator or the administrator's designee shall issue a decision ordering the employer to secure payment of workers' compensation insurance coverage and assessing the penalties as described in subsection (b) by certified mail to the employer's last known address.

(d) The employer may request a contested case hearing, in writing, within fifteen (15) calendar days of receipt of the decision assessing monetary penalties. If the request is not made within the fifteen-day period, then the decision becomes final.

(e) The employer has the burden of proof at the contested case hearing and shall produce documentary evidence that the penalties should be reduced.

(f) The contested case hearing must be scheduled to be heard within sixty (60) calendar days from the date of receipt by the bureau of the employer's written request for a contested case hearing pursuant to subsection (d).

(g) The administrator shall notify the agency responsible for the registry, as defined in § 50-6-901:

(1) When an employer engaged in the construction industry, as defined in § 50-6-901, fails to secure payment of compensation, as required by this chapter; and

(2) When an employer engaged in the construction industry, as defined in § 50-6-901, who has failed to secured workers' compensation insurance coverage, as required by this chapter, has secured requisite workers' compensation insurance coverage.

(h) If an employer, or successor in interest, fails to comply with this section two (2) or more times within a five-year period, then the monetary penalty is the greater of three thousand dollars (\$3,000) or three (3) times the average unpaid yearly workers' compensation premium for each second or subsequent violation. The second violation is presumed to be a willful violation subject to rebuttal by the employer, or successor in interest as set forth in subdivision (k)(1), with clear and convincing evidence to the contrary.

(i) If an employer engaged in the construction industry, as defined in § 50-6-901, fails to comply with this section two (2) or more times within a five-year period, in addition to other penalties pursuant to this chapter, then such employer is permanently prohibited from obtaining an exemption pursuant to part 9 of this chapter, and the administrator shall notify the agency responsible for the registry, as defined in § 50-6-901, of the prohibition. As used in this subsection (i), "such employer" includes, but is not limited to, a construction services provider, as defined by § 50-6-901, or successor in

interest, who applies for or has ever received a workers' compensation exemption pursuant to part 9 of this chapter.

(j)

(1) The administrator or the administrator's designee has the authority to seek an injunction in the chancery court of Davidson County to prohibit an employer from operating its business until the employer has complied with an order by the administrator or the administrator's designee to comply with the insurance requirements of this chapter.

(2) The employer may appeal, pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, a decision made, or order issued, by the administrator or the administrator's designee pursuant to this section.

(k)

(1) As used in this section, "successor in interest" means a successor in ownership of any part of a business or enterprise that is carried on and controlled in substantially the same manner as the penalized employer.

(2) A penalty issued under this section must follow an owner of a business, or member of an LLC, that is closed, liquidated, or dissolved, when that owner or member owns or operates any part of a subsequent business that is carried on and controlled in substantially the same manner as the penalized employer.

(3) A successor in interest is liable for a penalty assessed under this section against that employer.

(4) A penalized owner, general contractor, company, corporation, or member of an LLC, or a successor in interest, may appeal a penalty assessment by requesting a contested case hearing pursuant to subsection (d).

(5) The administrator or the administrator's designee may waive a penalty against a penalized owner, general contractor, company, corporation, or member of an LLC, or successor in interest, for good cause.

(l) The funds collected by the administrator or the administrator's designee for penalties assessed for violations of subdivision (a)(2) must be deposited in the employee misclassification education and enforcement fund established by § 50-6-913 to be administered by the administrator.

(m) In addition to the penalties provided for in this chapter, the bureau shall refer cases involving business operations that are in violation of this section to the Tennessee bureau of investigation or the appropriate district or state attorney general for any action deemed necessary under applicable criminal law.

(n) A person that submits an initial exemption registry application, renewal exemption registry application, or insurance application that contains false, forged, misleading, or incomplete information to avoid proper classification for premium calculations by concealing information or materially understating or concealing the amount of payroll, the number of employees, or the employees' duties is subject to a civil penalty. The penalty, per violation, is in an amount of up to the greater of one thousand dollars (\$1,000) or the unpaid premium, which is calculated as one and one-half (1 1/2) times the accurate average yearly workers' compensation premium for the employer based on the appropriate assigned risk rate minus the premium dollars actually paid by the employer on the policy that was the object of the understatement or concealment.

SECTION 3. Tennessee Code Annotated, Title 50, Chapter 6, Part 4, is amended by adding the following as a new section:

(a) In addition to other remedies provided in this chapter:

(1) If after due notice, an employer defaults in payment of penalties, then the amount due may be collected by civil action in the name of the administrator, and the employer adjudged in default shall pay the costs of the action; and

(2) The administrator or the administrator's designee is authorized to issue a distress warrant against the delinquent employer for the amount of the penalties that may be due and unpaid as of the date of the issuance.

(b) The distress warrant is returnable within thirty (30) days from its date and has the same effect as other distress warrants authorized by law for the collection of delinquent taxes or revenue owed to the state or an agency of the state.

(c) Distress warrants issued under the authority of this chapter for the collection of penalties, arising out of this chapter may, in the discretion of the administrator, be addressed to and delivered to an employee or representative of the bureau for the purpose of execution, and the employee or representative has the same power and authority as a sheriff for the purpose of levying and executing the distress warrant. All costs must be included in the total amount to be collected from the penalized party.

SECTION 4. Tennessee Code Annotated, Section 50-6-905, is amended by adding the following as a new subsection:

(f) An exemption that is fraudulent, or where the exemption holder is determined to be an employee is void.

SECTION 5. Tennessee Code Annotated, Section 50-6-908(b)(3)(B), is amended by adding the following to the end of the subdivision:

If a construction services provider fails to perform the notification required in this subdivision (b)(3)(B), then the person or entity for whom the provider provided services is not liable for workers' compensation insurance for the construction services provider.

SECTION 6. Tennessee Code Annotated, Section 50-6-914(a), is amended by deleting the subsection and substituting:

(a) Except as provided for in subsection (b), a general contractor, intermediate contractor, or subcontractor is liable for compensation to an employee injured while in the employ of a subcontractor of the general contractor, intermediate contractor, or

subcontractor and engaged upon the subject matter of the contract to the same extent as the immediate employer.

SECTION 7. Tennessee Code Annotated, Section 50-6-914(b), is amended by adding the following as a new subdivision:

(3) The assessment of retroactive fees or premiums are prohibited pursuant to time periods exempted by this chapter.

SECTION 8. Tennessee Code Annotated, Section 50-6-914(b)(2), is amended by adding the following as a new subdivision:

(D)

(i) A construction services provider is not liable for workers' compensation premiums prior to January 1, 2021, for a commercial construction project, as long as the provider held a valid exemption.

(ii) A general contractor, intermediate contractor, or subcontractor is not liable for workers' compensation premiums prior to January 1, 2021, for a construction services provider on a commercial construction project that held a valid exemption.

SECTION 9. Tennessee Code Annotated, Section 50-6-801(c), is amended by deleting the subsection and substituting:

(c) Except for funds collected by the administrator or the administrator's designee for penalties assessed for violations of § 50-6-412(a)(2) and (n), which must be deposited in the employee misclassification education and enforcement fund established by § 50-6-913, to be administered by the administrator, the remainder of the funds collected in § 50-6-412 must be deposited in the uninsured employers fund and must be used for payment of the costs incurred by the bureau of workers' compensation to administer the assessment of and collection of the other penalties provided in § 50-6-412, and the costs of administering this part, including, but not limited to, lien fees or fees of third-party administrators.

SECTION 10.

(a) This act takes effect July 1, 2021, the public welfare requiring it.

(b) This act ceases to exist July 1, 2024, the public welfare requiring it, at which time the provisions of law changed by this act that were in effect on June 30, 2021, will be revived.